

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION FOR	:	
AN ADMINISTRATIVE INJUNCTION	:	
INVOLVING	:	FINAL DECISION
	:	AND ORDER
MICHAEL THOMAS,	:	LS9811062RAL
RESPONDENT.	:	

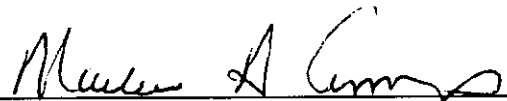
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 15th day of December 1998.


Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION
FOR AN ADMINISTRATIVE INJUNCTION
INVOLVING
MICHAEL THOMAS,
RESPONDENT

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**PROPOSED DECISION
AND ORDER**
Case No. LS-9811062-RAL

Based on the authority in section 440.21(2) of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and the Findings of Fact and Conclusions of Law below,

**THE DEPARTMENT OF REGULATION AND LICENSING
HEREBY ISSUES THE FOLLOWING SPECIAL ORDER:**

Effective on the date on which this order is signed by the departmental secretary or her designee,

- the respondent, Michael Thomas, is **ENJOINED AND PROHIBITED** from continuing to engage, directly or indirectly, in barbering or cosmetology, which is conduct which requires a credential under chapter 454, Stats., unless and until he obtains the appropriate credential under chapter 454, Stats.; and
- the respondent, Michael Thomas, is **ENJOINED AND PROHIBITED** from continuing to use the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" or any other title requiring a credential under chapter 454, Stats., unless and until he obtains the appropriate credential under chapter 454, Stats.

**ANY VIOLATION OF THIS SPECIAL ORDER MAY RESULT
IN A FORFEITURE OF UP TO \$10,000 FOR EACH OFFENSE,
WITH EACH DAY OF CONTINUED VIOLATION
CONSTITUTING A SEPARATE OFFENSE.**

PARTIES

The parties to this action under section 227.44 of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats., are:

Complainant: Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

Respondent: Michael Thomas
3021 West Wells Street, #31
Milwaukee, WI 53208

Regulatory Authority: Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. On November 6, 1998, the complainant, the Division of Enforcement in the Department of Regulation and Licensing, filed a petition for an administrative injunction. A hearing on the petition was scheduled for November 30, 1998. On November 5, 1998, a copy of the petition and a notice of hearing were served on the respondent by leaving them at his place of business. A copy of the petition and notice of hearing were also mailed on November 6, 1998 to the respondent at the address which he provided, 3021 West Wells Street, #1, Milwaukee, WI 53208. This mailing was returned with the notation, "No Such Number".

B. The notice of hearing informed Mr. Thomas that he was to file a written answer to the petition within 20 days after service. Mr. Thomas did not file an answer to the petition within the specified time limit.

C. The hearing was held as scheduled. The respondent did not appear. The department was represented by Attorney Steven Gloe of the Department's Division of Enforcement. Upon the respondent's non-appearance, attorney Gloe moved for a finding of default under sec. RL 3.13, Wis. Admin. Code, and the motion was granted. The hearing was recorded. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The petition in this action was served upon the respondent, Michael Thomas, by leaving a copy at his place of business and also by mailing a copy to the address which he supplied, and he failed to comply with the requirement to file an answer.
2. The respondent, Michael Thomas, does not hold a license to practice as a barber or cosmetologist in the State of Wisconsin.
3. On November 5, 1998, Michael Thomas was observed providing barbering and/or cosmetology services at Pennie's Cut & Dye in Milwaukee, Wisconsin.

CONCLUSIONS OF LAW

- I. Under section 440.21, Stats., and chapter RL 3, Wis. Admin. Code, the Department of Regulation and Licensing is the legal authority responsible for enforcing laws requiring credentials issued under chapters 440 to 459, Stats. The department has jurisdiction over the subject-matter of a petition alleging that a person engaged in a practice without a credential required under chapters 440 through 459.
- II. The respondent, Michael Thomas, was served by mail at his last-known address in Wisconsin under section RL 3.13, Wis. Admin. Code. The Department of Regulation and Licensing has personal jurisdiction over the respondent under section 801.04(2), Stats., and section RL 3.07, Wis. Admin. Code.
- III. The respondent, Michael Thomas, is in default under section RL 3.13, Wis. Admin. Code. The department may make findings of fact and enter an order on the basis of the petition and the evidence presented at the hearing.
- IV. The respondent, Michael Thomas, has engaged in the practice of barbering or cosmetology and used the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" without a barber or cosmetologist license or a manager license, in violation of section 454.04(2) of the Wisconsin Statutes. A special order enjoining Michael Thomas from continuing to practice barbering and cosmetology and to hold himself out as a barber or cosmetologist is therefore appropriate under section 440.21(2), Stats.

OPINION

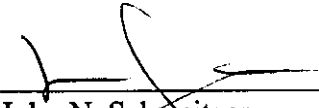
This case is an action for an administrative injunction against Michael Thomas, under the authority of sec. 440.21, Stats., and ch. RL 3, Wis. Admin. Code. The petition in this matter alleged that Mr. Thomas engaged in activities which are reserved by statute to those holding a valid barber or cosmetologist license or a manager license under sec. 454.04(2), Stats.

Mr. Thomas is in default, not having answered the petition as required by administrative rule, and not having appeared at the scheduled hearing. By his default, Mr. Thomas has effectively admitted all the allegations of the petition. There is no need in this opinion to weigh or discuss evidence, and no issues of fact remain.

The undisputed allegations in the complaint establish clearly that Mr. Thomas used the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" and engaged in the practice of barbering and cosmetology without the professional credential required by statute. An administrative injunction is authorized by section 440.21(2), Stats., and chapter RL 3, Wis. Admin. Code, and it is clearly appropriate here.

Any person who violates a special order issued under section 440.21(2), Stats., may be required to forfeit up to \$10,000 for each offense, under section 440.21(4), Stats., and each day of continued violation constitutes a separate offense. It should be noted that the issuance of a special order in an administrative injunction does not preclude other remedies for the respondent's violations of statutes, such as a misdemeanor prosecution by the district attorney under section 457.17, Stats.

Dated and signed: November 30, 1998



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BEFORE THE STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION FOR :
AN ADMINISTRATIVE INJUNCTION :
INVOLVING :

AFFIDAVIT OF SERVICE

MICHAEL THOMAS,
RESPONDENT.

Pamela A. Haack, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on December 18, 1998, she served the following upon the respondent:

Final Decision and Order dated December 15, 1998, LS9811062RAL

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail, with a return receipt requested in an envelope properly addressed to the above-named respondent at:

3021 West Wells St. #31
Milwaukee, WI 53208
Certified Z 233 821 153

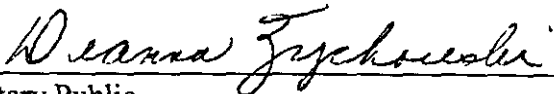
an address which appears in the files and records of the Department of Regulation and Licensing as the applicant's last known address.



Pamela A. Haack
Department of Regulation and Licensing

Subscribed and sworn to before me

this 21st day of December, 1998.



Notary Public

Dane County, Wisconsin

My Commission is ~~Permanent~~ expires 8-27-2000

NOTICE OF RIGHTS OF APPEAL

TO: Michael Thomas

You have been issued an Order. For purposes of service the date of mailing of this Order is 12/18/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935